

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

United States of America,

Plaintiff,

vs.

Abraham Fernando Duarte-Angulo,

Defendant.

No. CR-15-01433-PHX-DJH

FINDINGS AND RECOMMENDATION
OF THE MAGISTRATE JUDGE UPON A
PLEA OF GUILTY AND ORDER

TO THE HONORABLE DIANE J. HUMETEWA, UNITED STATES DISTRICT JUDGE:

Upon Defendant's request to enter a plea of guilty pursuant to Rule 11 of the Federal Rules of Criminal Procedure, this matter came on for hearing before United States Magistrate Judge Eileen S. Willett on November 13, 2015, with the written consents of Defendant, counsel for Defendant, and counsel for the United States of America.

The undersigned Magistrate Judge accepted Defendant's waiver of indictment after inquiry was made of Defendant as to the understanding of the right to prosecution by indictment. Defendant's written waiver constitutes a part of the plea agreement lodged with the Court.

The hearing on Defendant's plea of guilty was in full compliance with Rule 11 of the Federal Rules of Criminal Procedure, before the undersigned Magistrate Judge in open court and on the record. In consideration of that hearing and the statements made by Defendant under oath on the record and in the presence of counsel, and the remarks of the

1 Assistant United States Attorney and of counsel for Defendant,

2 **I FIND** as follows:

3 (1) that Defendant understands the nature of the charge to which Defendant
4 pleads and the elements of the offense(s) to which Defendant is pleading guilty;

5 (2) that Defendant understands the right to trial by jury, to persist in a plea of not
6 guilty, to the assistance of counsel, and appointed counsel if necessary at trial and at
7 every other stage of the proceeding, to confront and cross-examine adverse witnesses, the
8 right against compelled self-incrimination, to testify and present evidence, and to compel
9 the attendance of witnesses;

10 (3) that Defendant understands any maximum possible penalty for the offense to
11 which Defendant is pleading guilty, including imprisonment, fine and supervised release,
12 and where applicable, any mandatory minimum penalty; that Defendant understands the
13 effect of the supervised release term; that Defendant understands the Court's authority to
14 order restitution and its obligation to impose a special assessment and any applicable
15 forfeiture;

16 (4) that Defendant understands the Court's obligation to calculate the applicable
17 sentencing guideline range and to consider that range, possible departures under the
18 Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a); that
19 Defendant understands that the sentencing guidelines are advisory, not mandatory, and
20 that the Court may sentence outside those guidelines;

21 (5) that Defendant understands that answers given by Defendant may later be used
22 in a prosecution for perjury or false statement;

23 (6) that Defendant understands that by pleading guilty Defendant is waiving the
24 right to a jury trial;

25 (7) that Defendant understands the terms of any plea agreement provision waiving
26 the right to appeal or to collaterally attack the sentence, and has knowingly, intelligently
27 and voluntarily waived those rights;

28 (8) that the plea of guilty by Defendant has been knowingly, intelligently, and

1 voluntarily made and is not the result of force or threats or of promises apart from the
2 plea agreement between the parties;

3 (9) that Defendant is competent to plead guilty;

4 (10) that Defendant is satisfied with the representation provided by defense
5 counsel; and

6 (11) that there is a factual basis for Defendant's plea.

7 **I RECOMMEND** that the Court accept Defendant's plea of Guilty to the
8 Information.

9 **ORDER**

10 **IT IS ORDERED** that any objection to the guilty plea proceedings and any
11 request for supplementation of those proceedings be made by the parties in writing and
12 shall be specific as to the objection or request made. All objections or requests for
13 supplementation shall be filed within fourteen (14) days of the date of service of a copy
14 of these findings unless extended by an Order of the assigned judge.

15 **IT IS FURTHER ORDERED** that any letters, documents, or other matters
16 Defendant would like the sentencing judge to consider before sentencing (including the
17 English translation of any writings not in English) must be submitted by defense counsel
18 in paper form with the original to the U. S. Probation Office and copies to the sentencing
19 judge and opposing counsel at least five (5) business days prior to the sentencing date or
20 they may be deemed untimely by the sentencing judge and not considered. No more than
21 ten (10) character letters shall be submitted by defense counsel, unless otherwise ordered
22 by the court. Character letters shall not be mailed directly to the sentencing judge by any
23 family members or other persons writing in support of the defendant. Character letters or
24 a notice of such shall not be filed electronically unless otherwise ordered by the court.

25 **IT IS FURTHER ORDERED** that any motions for upward or downward
26 departures or any sentencing memoranda must be filed at least seven (7) business days
27 prior to the sentencing date. Responses are due three (3) business days prior to the
28 sentencing date. Any motion to continue sentencing must be filed promptly upon

1 discovery of the cause for continuance and must state the cause with specificity. Motions
2 to continue sentencing filed less than fourteen (14) days before sentencing are disfavored.

3 Dated this 16th day of November, 2015.

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7 Honorable Eileen S. Willett
8 United States Magistrate Judge
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